

AMENDED IN SENATE APRIL 12, 1999

SENATE BILL

No. 1231

**Introduced by Committee on Revenue and Taxation
(Senators Chesbro (Chair), Alpert, Bowen, Burton,
Johnston, McPherson, and Poochigian)**

February 26, 1999

An act to amend ~~Section 38631~~ Sections 63.1, 402.9, and 38631 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1231, as amended, Committee on Revenue and Taxation. Taxation: ~~timber yield tax~~.

The

(1) The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Constitution also excludes from the terms "purchased" and "change in ownership" the purchase or transfer of the principal residence of the transferor, or the purchase or transfer of the first \$1,000,000 of all other real property, in the case of a purchase or transfer between parents and their children, as defined by the Legislature.

Statutory law that implements this constitutional exclusion requires an application for exclusion to be filed within certain specified time periods.

This bill would clarify the filing requirements for claiming an exclusion in the circumstance where the property has not been transferred to a 3rd party. By imposing new duties upon local assessors in the processing of exclusion claims, this bill would impose a state-mandated local program.

(2) Existing law provides that, unless otherwise provided in the Constitution, all property is taxable and shall be assessed at the same percentage of fair market value, and further requires that all property so assessed shall be taxed in proportion to its full value.

Existing law prohibits the assessor from considering as income certain subsidy payments made by the federal government to a lender on certain property when valuing that property for persons of low- and moderate-income that is financed under Section 236 of the federal National Housing Act.

This bill would make those provisions also applicable to property financed under Section 515 of the federal National Housing Act.

(3) The Timber Yield Tax Law at one time required the State Board of Control to approve whether any amount in excess of \$50,000 had been illegally determined to be in excess of the amount legally due, prior to the State Board of Equalization authorizing the cancellation of the amount upon its records.

This bill would eliminate the reference to any amount in excess of \$50,000 with respect to that prior approval requirement of the State Board of Control.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 63.1 of the Revenue and*
2 *Taxation Code is amended to read:*

3 63.1. (a) Notwithstanding any other provision of this
4 chapter, a change in ownership shall not include the
5 following purchases or transfers for which a claim is filed
6 pursuant to this section:

7 (1) The purchase or transfer of real property which is
8 the principal residence of an eligible transferor in the
9 case of a purchase or transfer between parents and their
10 children.

11 (2) The purchase or transfer of the first one million
12 dollars (\$1,000,000) of full cash value of all other real
13 property of an eligible transferor in the case of a purchase
14 or transfer between parents and their children.

15 (3) (A) Subject to subparagraph (B), the purchase or
16 transfer of real property described in paragraphs (1) and
17 (2) of subdivision (a) occurring on or after March 27,
18 1996, between grandparents and their grandchild or
19 grandchildren, if all of the parents of that grandchild or
20 those grandchildren, who qualify as the children of the
21 grandparents, are deceased as of the date of purchase or
22 transfer.

23 (B) A purchase or transfer of a principal residence
24 shall not be excluded pursuant to subparagraph (A) if the
25 transferee grandchild or grandchildren also received a
26 principal residence, or interest therein, through another
27 purchase or transfer that was excludable pursuant to
28 paragraph (1) of subdivision (a). The full cash value of
29 any real property, other than a principal residence, that
30 was transferred to the grandchild or grandchildren
31 pursuant to a purchase or transfer that was excludable
32 pursuant to paragraph (2) of subdivision (a) and the full
33 cash value of a principal residence that fails to qualify for
34 exclusion as a result of the preceding sentence shall be
35 included in applying, for purposes of paragraph (2) of

1 subdivision (a), the one million dollar (\$1,000,000) full
2 cash value limit specified in paragraph (2) of subdivision
3 (a).

4 (b) (1) For purposes of paragraph (1) of subdivision
5 (a), “principal residence” means a dwelling for which a
6 homeowners’ exemption or a disabled veterans’
7 residence exemption has been granted in the name of the
8 eligible transferor. “Principal residence” includes only
9 that portion of the land underlying the principal
10 residence that consists of an area of reasonable size that
11 is used as a site for the residence.

12 (2) For purposes of paragraph (2) of subdivision (a),
13 the one million dollar (\$1,000,000) exclusion shall apply
14 separately to each eligible transferor with respect to all
15 purchases by and transfers to eligible transferees on and
16 after November 6, 1986, of real property, other than the
17 principal residence, of that eligible transferor. The
18 exclusion shall not apply to any property in which the
19 eligible transferor’s interest was received through a
20 transfer, or transfers, excluded from change in ownership
21 by the provisions of either subdivision (f) of Section 62 or
22 subdivision (b) of Section 65, unless the transferor
23 qualifies as an original transferor under subdivision (b) of
24 Section 65. In the case of any purchase or transfer subject
25 to this paragraph involving two or more eligible
26 transferors, the transferors may elect to combine their
27 separate one million dollar (\$1,000,000) exclusions and,
28 upon making that election, the combined amount of their
29 separate exclusions shall apply to any property jointly sold
30 or transferred by the electing transferors, provided that
31 in no case shall the amount of full cash value of real
32 property of any one eligible transferor excluded under
33 this election exceed the amount of the transferor’s
34 separate unused exclusion on the date of the joint sale or
35 transfer.

36 (c) As used in this section:

37 (1) “Purchase or transfer between parents and their
38 children” means either a transfer from a parent or
39 parents to a child or children of the parent or parents or
40 a transfer from a child or children to a parent or parents

1 of the child or children. For purposes of this section, the
2 date of any transfer between parents and their children
3 under a will or intestate succession shall be the date of the
4 decedent's death, if the decedent died on or after
5 November 6, 1986.

6 (2) "Purchase or transfer of real property between
7 grandparents and their grandchild or grandchildren"
8 means a purchase or transfer on or after March 27, 1996,
9 from a grandparent or grandparents to a grandchild or
10 grandchildren if all of the parents of that grandchild or
11 those grandchildren who qualify as the children of the
12 grandparents are deceased as of the date of the transfer.
13 For purposes of this section, the date of any transfer
14 between grandparents and their grandchildren under a
15 will or by intestate succession shall be the date of the
16 decedent's death.

17 (3) "Children" means any of the following:

18 (A) Any child born of the parent or parents, except a
19 child, as defined in subparagraph (D), who has been
20 adopted by another person or persons.

21 (B) Any stepchild of the parent or parents and the
22 spouse of that stepchild while the relationship of
23 stepparent and stepchild exists. For purposes of this
24 paragraph, the relationship of stepparent and stepchild
25 shall be deemed to exist until the marriage on which the
26 relationship is based is terminated by divorce, or, if the
27 relationship is terminated by death, until the remarriage
28 of the surviving stepparent.

29 (C) Any son-in-law or daughter-in-law of the parent or
30 parents. For the purposes of this paragraph, the
31 relationship of parent and son-in-law or daughter-in-law
32 shall be deemed to exist until the marriage on which the
33 relationship is based is terminated by divorce or, if the
34 relationship is terminated by death, until the remarriage
35 of the surviving son-in-law or daughter-in-law.

36 (D) Any child adopted by the parent or parents
37 pursuant to statute, other than an individual adopted
38 after reaching the age of 18 years.

1 (4) “Grandchild” or “grandchildren” means any child
2 or children of the child or children of the grandparent or
3 grandparents.

4 (5) “Full cash value” means full cash value, as defined
5 in Section 2 of Article XIII A of the California
6 Constitution and Section 110.1, with any adjustments
7 authorized by those sections, and the full value of any new
8 construction in progress, determined as of the date
9 immediately prior to the date of a purchase by or transfer
10 to an eligible transferee of real property subject to this
11 section.

12 (6) “Eligible transferor” means a grandparent, parent,
13 or child of an eligible transferee.

14 (7) “Eligible transferee” means a parent, child, or
15 grandchild of an eligible transferor.

16 (8) “Real property” means real property as defined in
17 Section 104. Real property does not include any interest
18 in a legal entity.

19 (9) “Transfer” includes, and is not limited to, any
20 transfer of the present beneficial ownership of property
21 from an eligible transferor to an eligible transferee
22 through the medium of an inter vivos or testamentary
23 trust.

24 (10) “Social security number” also includes a taxpayer
25 identification number issued by the Internal Revenue
26 Service in the case in which the taxpayer is a foreign
27 national who cannot obtain a social security number.

28 (d) (1) The exclusions provided for in subdivision (a)
29 shall not be allowed unless the eligible transferee, the
30 transferee’s legal representative, or the executor or
31 administrator of the transferee’s estate files a claim with
32 the assessor for the exclusion sought and furnishes to the
33 assessor each of the following:

34 (A) A written certification by the transferee, the
35 transferee’s legal representative, or the executor or
36 administrator of the transferee’s estate made under
37 penalty of perjury that the transferee is a grandparent,
38 parent, child, or grandchild of the transferor. In the case
39 of a grandparent-grandchild transfer, the written
40 certification shall also include a certification that all the



1 parents of the grandchild or grandchildren who qualify as
2 children of the grandparents were deceased as of the date
3 of the purchase or transfer and that the grandchild or
4 grandchildren did or did not receive a principal residence
5 excludable under paragraph (1) of subdivision (a) from
6 the deceased parents, and that the grandchild or
7 grandchildren did or did not receive real property other
8 than a principal residence excludable under paragraph
9 (2) of subdivision (a) from the deceased parents. The
10 claimant shall provide legal substantiation of any matter
11 certified pursuant to this subparagraph at the request of
12 the county assessor.

13 (B) A copy of a written certification by the transferor,
14 the transferor's legal representative, or the executor or
15 administrator of the transferor's estate made under
16 penalty of perjury that the transferor is a grandparent,
17 parent, or child of the transferee. The written
18 certification shall also include either or both of the
19 following:

20 (i) If the purchase or transfer of real property includes
21 the purchase or transfer of residential real property, a
22 certification that the residential real property is or is not
23 the transferor's principal residence.

24 (ii) If the purchase or transfer of real property
25 includes the purchase or transfer of real property other
26 than the transferor's principal residence, a certification
27 that other real property of the transferor that is subject
28 to this section has or has not been previously sold or
29 transferred to an eligible transferee, the total amount of
30 full cash value, as defined in subdivision (c), of any real
31 property subject to this section that has been previously
32 sold or transferred by that transferor to eligible
33 transferees, the location of that real property, the social
34 security number of each eligible transferor, and the
35 names of the eligible transferees of that property.

36 (2) If the full cash value of the real property purchased
37 by or transferred to the transferee exceeds the
38 permissible exclusion of the transferor or the combined
39 permissible exclusion of the transferors, in the case of a
40 purchase or transfer from two or more joint transferors,

1 taking into account any previous purchases by or
2 transfers to an eligible transferee from the same
3 transferor or transferors, the transferee shall specify in his
4 or her claim the amount and the allocation of the
5 exclusion he or she is seeking. Within any appraisal unit,
6 as determined in accordance with subdivision (d) of
7 Section 51 by the assessor of the county in which the real
8 property is located, the exclusion shall be applied only on
9 a pro rata basis, however, and shall not be applied to a
10 selected portion or portions of the appraisal unit.

11 (e) (1) The State Board of Equalization shall design
12 the form for claiming eligibility. Except as provided in
13 paragraph (2), any claim under this section shall be filed:

14 (A) For transfers of real property between parents
15 and their children occurring prior to September 30, 1990,
16 within three years after the date of the purchase or
17 transfer of real property for which the claim is filed.

18 (B) For transfers of real property between parents
19 and their children occurring on or after September 30,
20 1990, and for the purchase or transfer of real property
21 between grandparents and their grandchildren
22 occurring on or after March 27, 1996, within three years
23 after the date of the purchase or transfer of real property
24 for which the claim is filed, or prior to transfer of the real
25 property to a third party, whichever is earlier.

26 (C) Notwithstanding subparagraphs (A) and (B), a
27 claim shall be deemed to be timely filed if it is filed within
28 six months after the date of mailing of a notice of
29 supplemental or escape assessment, issued as a result of
30 the purchase or transfer of real property for which the
31 claim is filed.

32 (2) In the case in which the real property subject to
33 purchase or transfer has not been transferred to a third
34 party, a claim for exclusion under this section that is filed
35 subsequent to the expiration of the filing periods set forth
36 in paragraph (1) shall be considered by the assessor,
37 subject to all of the following conditions:

38 (A) Any exclusion granted pursuant to that claim shall
39 apply commencing with the lien date of the assessment
40 year in which the claim is filed.

(B) Under any exclusion granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (A) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (A) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

(3) (A) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(B) Paragraph (2) shall apply to purchases or transfers between parents and their children that occurred on or after November 6, 1986, and to purchases or transfers between grandparents and their grandchildren that occurred on or after March 27, 1996.

(4) For purposes of this subdivision, a transfer of real property to a parent or child of the transferor shall not be considered a transfer to a third party.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the social security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar (\$1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the

1 general principle that transfers by reason of death occur
2 at the time of death.

3 (h) (1) Except as provided in paragraph (2), this
4 section shall apply to purchases and transfers of real
5 property completed on or after November 6, 1986, and
6 shall not be effective for any change in ownership,
7 including a change in ownership arising on the date of a
8 decedent's death, that occurred prior to that date.

9 (2) This section shall apply to purchases or transfers of
10 real property between grandparents and their
11 grandchildren occurring on or after March 27, 1996, and,
12 with respect to purchases or transfers of real property
13 between grandparents and their grandchildren, shall not
14 be effective for any change in ownership, including a
15 change in ownership arising on the date of a decedent's
16 death, that occurred prior to that date.

17 *SEC. 2. Section 402.9 of the Revenue and Taxation*
18 *Code is amended to read:*

19 402.9. In valuing property for persons of low and
20 moderate income, ~~which~~ that is financed under Section
21 236 or Section 515 of the federal National Housing Act,
22 since federal restrictions accompanying ~~such~~ these
23 programs substantially affect actual income and expenses
24 of the property owner, the assessor shall not consider as
25 income any interest subsidy payments made to a lender
26 on ~~such~~ that property by the federal government.

27 *SEC. 3. Section 38631 of the Revenue and Taxation*
28 *Code is amended to read:*

29 38631. If any amount has been illegally determined
30 either by the person filing the return or by the board, the
31 board shall set forth that fact in its records, certify the
32 amount determined to be in excess of the amount legally
33 due and the person against whom the determination was
34 made, and authorize the cancellation of the amount upon
35 the records of the board. Any proposed determination by
36 the board pursuant to this section with respect to an
37 amount in excess of fifty thousand dollars (\$50,000) shall
38 be available as a public record for at least 10 days prior to
39 the effective date of that determination.

1 *SEC. 4. Notwithstanding Section 17610 of the*
2 *Government Code, if the Commission on State Mandates*
3 *determines that this act contains costs mandated by the*
4 *state, reimbursement to local agencies and school*
5 *districts for those costs shall be made pursuant to Part 7*
6 *(commencing with Section 17500) of Division 4 of Title*
7 *2 of the Government Code. If the statewide cost of the*
8 *claim for reimbursement does not exceed one million*
9 *dollars (\$1,000,000), reimbursement shall be made from*
10 *the State Mandates Claims Fund.*

